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The Criminal Policy On Regulation Concerning Black Magic In Indonesian Law

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ABSTRACT

The black magic is a crime in which the black magic practioner can be regarded as a bandit. In the perspective of religious teachings, to study, to teach, to channelize and to use the services of black magic is a forbidden thing so that it becomes the legal law in the society. Criminal policy of resolving black magic criminality required the panel law to be a mean since the effect of the black magic can make the victim sustain injury and more ironically death. This research entitled criminal policy of black magic management in the positive law of Indonesia. The problem of this research is how the criminal policy of black magic management in the positive law of Indonesia. This research is a normative juridical research, where the data which are used in this research is secondary data; namely books, legislation, documents and other writing related to the problem being researched. Based on the result of the research about criminal policy in managing the black magic is needed to resolve black magic criminality and wide effect which can be caused by the black magic itself both from victim side and the black magic practioner side and from the society's persecuted action by accusing him as a black magic practioner. The criminality of black magic exists in the article of 239 of Criminal Code (KUHP), by way of punishing everybody who claims that he has supernatural power, disclosing, giving hope, and offering services to others.

INTRODUCTION

The development of law is always left behind the development of crime. Crime is never perfect and always evolved and modified as well as in the global and technology era. It is an anti-social act which is opposed by its people and considered as despicable act and it can certainly cause harm, insecurity, discomfort and the society will stay away from the consequences of the crime as far as possible for the sake of a safe, peaceful and harmonic life.

Human, zoon politicon, cannot live without others due to human is created to live in group and to socialize with others. Basically, perception which considers that humans are good is true. And in reality, those who have bad characters are also admitted because every single human has different

characters, nature, socio-cultural background, economy and education so that the variance causes different ways and attitudes of acting and behaving.

In daily life, people who stay living in the group, interacting and making social relation is frequently ends with quarrel and fight. Consequently, they have revenge one another and try to maintain the right time of taking revenge in the real acts. Those who dear to show their vengeance will act it through formal deeds. In other words, they act it verbally or accomplish it by hitting, killing and so on. But for those who prefer to channel it into invisible material deeds by black magic. It resemblesto an expression *"attack without force and destroy without power"*.

Life is full of mistery and riddle as well as this recent developed technology; Indonesian people cannot be separated from mystics, myths, and relegio-magis. As matter of fact, a part of Indonesian people is not able to stay away from mystics, it is because they live in the neighbourhood so that what they do cannot be released away from metaphysical things.

Ideally, the more advance of civilization, the more humans will be able to stay away from mystical things. The villagers who especially do social relations and interactions might not be released away from mystical things, moreover everything we think of a small and common act but in the side of society, there is always a relationship with nature of beyond human nature. However, the highly educated people and body politicians who participated in public election frequently ask for shaman's help and believe in mystical things and magical practice. So that perception saying that the more advance of civilization, society will be further away from mystics and magical practices is always debatable due to it is constrast to the reality.

Crime is viewed as serious criminal and anti-social in which people hate that kind of acts due to it always harms whoever the victim regardless of whether it is regulated or not by the law of country. The black magis is a kind of crime as so practicing it is also categorized as criminal acts. Further, in the religious law, people who teach, people who learn, people who give services, and people who take the services is also forbidden acts. Such a fact shows that for the society or the law of living in the black magic society is a prohibited and anti-social act so it is worthy to be called a crime and for the person named crooks.

Black magicis one variant of black magic and some people called it by magical formulas. Up to now, the existence of witchcraft in the middle of society is existed, not only for those who are irreligious even those who are religious trust to its existence. The perception is being said that religious people must not believe in it is inappropriate. Otherwise, religious people must believe in the existence of magic due to it is known by Prophets and even they are inseparable from the name of magic itself.

As such the offender of crime doing action by using media, the modusoperandi of witchcraft employs supernatural powers; namely by wiping the offender's hand to the victim's body and by doing the ritual as offerings such as dolls, nails, seven various kinds of flowers, and so on. As a result, the victim get a bloated stomach, it seems like a woman who is getting pregnant, when it is medically checked, there is no symptoms of any disease, it can cause the victim vomit much blood which will end to the death if there is no immediate treatment.

Fundamentally, the witchcraft praticioner is as a service giver because there are many people using his services, but there will be another process of maintaining the witchcraft itself by getting inheritannce from his ancestor or learning from a witchcraft praticioner. Getting inheritance of witchcraft is a must to keep doing, unless he himself will become a victim. While having the witchcraft by learning from witchcraft praticioner is that it is learnt to be shield or self-protector from other magics (refusing magic), but on the progress of the witchcraft, it is used to harm others because some of factors for instance revenge, jealousy, and envy.

The witchcraft phenomenonof a crime in the society brings about matter for Indonesia law, in particular the criminal law. The matter isappeared because witchcraft is considered as criminaland malicious acts, on the other side it is not regulated in Indonesia laws as a criminal acts because it is

complicated to be evidenced. Witchcraft left only the objects which are used to do the black magic or those who are honestly crime that he or she is capable of doing the black magic and approving them who need his or her services. In its law enforcement, it can not be evidenced both scientifically and forensically; the black magician can not be officially convicted as a suspect (law breaker) even though he declared that he has ever done the black magic which made the victims passed away and people agreed to claim that he was a doer.

Another case which is becoming a problem in law enforcement of black magic crime is that the Criminal Code, especially in the case of murder, does not regulate black magic specifically, in article 338 (ordinary murder), 339 (inquisitive murder), 340 (premeditated murder), as well as article 351 of the persecution which causes illness, injury and death, the black magic does cause illness and death but it is not a persecution because there is no violence in this kind of crime and the medical science cannot reveal that a person is sick or dying due to the black magic. Thus, it can be concluded that the articles above cannot gain the substance and essence of the black magic itself, so that the supremacy of law will be more complicated.

The law must be enforced because crime is a crime and the state must provide protection to its people, as it is in the opening of 1945 Constitution of Republic of Indonesia *"to protect the entire Indonesian nation and all over Indonesia"*. being viewed from a victim side where the law must provide protection to victims or society, when the law itself is unable to provide protection to the society, it indicates that the raise of anarchist or persecuted action because of black magic crime cannot be resolved through positive law, where the society should find a justice, or society should resolve this issue by their own way, namely crime for crime in the form of killing the black magic practitioners, or they will gang up on him and even there will be a victim of mutilation.

The existence of the state in conducting the criminal law policy (penal policy) in overcoming such this problem is required to criminalize the black magic in RKUHP. It is not a crime that society perceives as a crime because it is governed by state law (*mala prohibita*), yet it is not governed by the law of the country even though the black magic is considered as crime (*mala in se*). The problem is that how far the criminal policy in governing the black magic crime although the purpose of penal law is to find out the truth of matter in which the process of proving in the penal law is becoming evidence that should be obtained legally and be accounted.

The problem formulation of this research is that "How Criminal Policy of Black Magic Management in the Positive Law in Indonesia?"

METHOD

This study aims to reveal how the criminal policy regulates the black magic in positive law in Indonesia. This study is a normative juridical due to use of secondary data or often called by library research. Secondary data is used in this study are books, journals, ordinance legislation, documents and writings which has related to the issues of this study. The methods of data analysis in this study is used the descriptive qualitative methods then it is analyzed of study issues.

RESULTS AND DISCUSSIONS

a. The Definition of Crime and Criminal Law

Substantially, the human is about to create a safe life and orderly crowd, but on the contrary there is certain society got a criminal in terms, nature, characteristic, and different qualifications for society and others. Talking of crime, it has been existed in olden of human courteousness and the development of law. The number of academic degree-holders or educated people defined that crime is a bad deed and that is why the doer is classified as bandit. Meanwhile the term of crime generally is defined as a bad attitude or behavior which can be felt by people.

Sociologically, crime is the human's attitude which is created by some societies who have a dominance and authority. It means that crime is namely a "cap/labeling" which is given to the acts of human, and by other parties. Thus, in the social reality, crime is an intended establishing action.

In the Criminal Code (KUHP), it is explicitly stated that there is no term of crime, it is only distinguishing between acts which are classified as crime or here is strictly no understanding of the crime, only distinguishes between acts categorized as crimes or violations. Regulation of crime is not only about what is stated in Book II of the Criminal Code (KUHP), but also it is regulated out of the Criminal Code (KUHP). To notice the specific rules which are listed out the Criminal Code, it will be visible that the recent developments are characterized by the increasing number of crimes committed and categorized as crimes. This is based on article 103 of the Criminal Code which authorizes the legislator to establish a criminal sanction as stated *"the provisions of Chapter 1 to VIII of this book also apply to acts which by other provisions of law is punishable by criminal offenses, unless otherwise stipulated by the law"*, it means that the provisions in Book I of the Criminal Code apply to the provisions of other criminal law, except for any other legal provisions. From the descriptions above, it can be concluded that the crime may be interpreted as an act which is contrast to the contents of Book II of the Criminal Code and the provisions out of the Criminal Code that categorizes the actions as a crime or criminal acts.

Classifying the criminal act, first it must be seen which is especially called by a criminal act. Moeljatno said that *"the criminal act is kind of act which is regulated by the penal law and prohibited by law itself, and whoever breaks the law in terms of its form and characteristic, those are kind of act which contemned of court. Those acts also damage the Figure Example society in the sense of contending with or obstruct the law and order in the association that is deemed to be good and just"*.

According to W.A. Bongger, "crime is an act which is very anti-social and is consciously got a contradiction of country". Whereas Paul Moedikdo Moelino also stated that "crime is the violation in norma of law which interpreted as the contempt of court, annoying, and not permitted." Furthermore, on the other hand, Simon also formulated the criminal act (*starbaarfeit*) in several elements:

- a. The act itself must be a human act.
- b. It also must be done intentionally, willingly, and is not reflective act.
- c. It is an contradictive act or breaking the law (*wederrechtelijk*).
- d. It should be done by people that could be accounted (*toerekeningsvatbaar persoon*).
- e. At last, the accountable people must be connected to the fault, it means that they could be blamed of their acts.

Based on the two formulations above, both Moeljatno and Simon argued that a criminal act must be a contradictory or unlawful act (*wederrechtelijk*), whereas what is meant by unlawful acts is an act that is contrast against written law and unwritten law. According to the doctrine, the deed against the law can be classified into a formal sense and can material sense. In the formal sense, if an act is prohibited and threatened by punishment of law, while in a material sense is an act against the law even though not expressly prohibited and threatened with punishment by law.

Based on these differences, the definition of crime is not only aimed at prohibited acts and is threatened with such punishment as stated in Book II of the Criminal Code and regulations outside the Criminal Code, but also against acts contrary to the norms and rules, the methods available in the community. This means that we must be able to differentiate between evil and crime. The interpretation of the crimes by society is subjective, in which the interpretation is influenced by the time and place of the community. To appreciate the subjective meaning of crime, the author will quote some of the meanings of the crime, among them are:

- a. Bongger

Crime is very anti-social act that is consciously opposed with country and is being sentenced (panel law).

- b. Vermeres Sweedlumdan Golga van Growfot
Crime is as a failure that has undertaken in receiving the social values which is formulated in writing.
- c. The New American Encyclopedie Volume II
Crime is the serious assault of being banned by laws of deviation importance, moral, and safety for public, whether it is an act that neglected of obligation which must be ordered by law or in the most interest of breaking it deliberately that is stated by laws.
- d. Paul Moedigdo Moeliono, SH
Crime is interpreted as act that breaks the norms of law or to be interpreted as harm, annoying, so may not to be permitted in public.
- e. Bemmelen
Crime is an anti-social deed that was caused of harm, not proper in the societies about restlessness and to be reassuring the society of country those must be sentenced the law to criminals.
- f. Sue Titus Reid
The formulations of crime that must be considered are:
 - a. It breaks the panel law.
 - b. It is done without a defense or justification those are approved by law.
 - c. The crime is deliberated actions (omission). In this signification, people are not able to give a punishment due to their views but there must be an action in being acted of it. The failure into be acted that is a crime, if there is a legal obligation to be acted in a particular case must be in the criminal intent or mens rea.
 - d. Borne witness by state as a criminality or violation.
1. The definition of crime juridicially
Stated by law, a crime is not the punishable act by panel law. A bandit was a person who did an act which had been prohibited by law, if viewed in the formulas those were listed in the articles of Criminal Code (KUHP) about the meaning of crime is all human deeds fulfilling the elements which was mentioned in Criminal Code starting from article of 104-488 and the outside of Criminal Code categorizing his actions as a criminality.
2. The definition of crime sociologically
The definition of crime is sociologically more broadly than the definition of crime juridically, because the definition will also include juridical understanding, according to R. Soesilo "crimes also include all human behaviors, although it is not determined in law yet, but essentially it can be dranw or felt by citizens in which they interpreteit as behavior or action that economically or sociologically attack or harm society and hurt feelings of joy in life.
Based on the description above, it can be drawn that the crime of black magic is sociological or legal crime which means that although the black magic is not regulated in the law, butby looking at the impact it caused, it is considered contradictory and harming the society

b. Overview About Santet in Indonesia

The black magic is the power to sustainedinjuries of others magically, which is done in 3 ways:

1. Through the power of the mind which is called analogy; namely when lightening magical energy the practioner imagines that the object target is in the grip of his hand either in the form of puppets in the puncture and others.
2. Through the ability to change material into energy and then directed to the target.
3. with the help of evil spirits.

Taking note of the formulation above, the problem is why people do the black magic, on this matter, Romli Atmasasmita states that "the black magic is a social fact so that it becomes the the problem of life and developed in the society. Practicing the black magic has a different motive and purpose, the characteristic of the black magic is done by means of mediation or tools of objects as symbols. The means or tools are used in variativeway according to the desired destination. The first tool called "puputrian" in the form of dolls made of straw, the doll symbolized as a victim against whom the black magic will be targeted. The second tool is awashbasin containing water and a knife, both tools are intended to make the victim passed away by piercing the knife or scissors to the doll and plunging

a knife into a basin that contains water, if the water turns to the red colour, it means that the black magic has succeeded. The third tool is a battle that is used with the same purpose with the first and second tool, but through this tool the victim will firstly get itching all over his body. The fourth tool is usually called a supplement in the form of needles, nails or spoons with the aim of making the victim suffering before the victim finally dies. In line with the use of these tools, it can be obtained clues that there are 3 types of black magic as follows:

1. black magic of wrehit: a kind of the most violent black magic because the victim will experience fresh blood vomiting and usually the victim will die in a short time if not immediately helped.
2. Black magic of gangoang: a kind of witchcraft that causes the victim will suffer on one part of his body continuously until the victim will die if not immediately given an antidote.
3. Black Magic of bundle: a kind of black magic that can kill one's economic business by planting a bottle of water and covered by using the ground that is taken from the cemetery.

Based on the characteristics described above, it can be concluded that the purpose of using the black magic is to make the victim persecuted during his life and end with the death.

Essentially, the black magic began to be practiced before human civilization is developed. It is only the differences of name and the way to be practiced in each region. At first, it was done with natural spirituality such as dancing, mouthed of magic formula, beating objects, and other movements. It is also practiced by the variant of races, cultures and environments in which humans are placed, so it is owned by a particular nation but exists in each nation with the difference of characteristics.

Basically Islam teaches its people to believe in the supernatural including magic, because it has existed at the same time as the start of human civilization. The black magic in the practice is always used as magical powers so that the black magic is included into the magic. Magic problems are listed in Al - The Quran so that it is itself an essential and unquestionable existence.

Magic comes from the word "as-sahar" which means the end-of-night gathering with the beginning of the day gathering. Al-Azhari argued that magic is an action which is done for the purpose of coming closer to the devil and look for his help. The definition of the magic itself is about turning the original objects to another form. If the black magic practitioner brings the falsehood into the right thing and consider that it is not the real, surely the black magic practitioner has done the magic by moving his face. However Ibn Faris stated that magic is the real falsehood of the right form. In terms of syara', Fakhuruddin Al-Razi defined that magic is everything that is invisible because of the magic itself and imagine that it is not the real suck being hypnotized and deceived. asserted that magic is everything that is invisible to magic and is conceivably as if it is not as if it were hypnotized and deceived, Ibn Qudamah Al Madizi said magic is like bundles, the magic formula and the written words and turn it into a certain for so that the victim will feel tired, but the disease does not touch him straight forward into his heart and mind.

Based on those explanations can be concluded, if the sorcerer needed to use the magical powers to someone, first he must make a deal with the devil following of acts are surely prohibited by religion such as forbidden and shirk of deeds. In the English dictionary the words of "magic and witchcraft" has the same meaning, but in the concept of Anthropology these two words have different interpretation. The differences among them are:

- (1) The black magic practitioner used amulet's help to attain his bad aim but the sorcerer used the mystical powers in his own self and not to use amulet to act.
- (2) Out the corner of motivation, the sorcerer is as the slave of ghost or devil reflecting on his face is ghostlike, but the black magic practitioner is only forced by current exhortations such as envy, jealousy, and revenge.
- (3) The black magic practitioner realized his act. Conversely, the sorcerer is not aware due to the power in his own self so he is indicted by other people.
- (4) The sorcerer are claimed to be unkind ever but the black magic practitioner is so dangerous at a certain of time.
- (5) The sorcerer has become a sorcerer since he was born. On the contrary, the black magic practitioner is gotten it after he grew up (after the magic power is inherited).

The argumentation of the magic in religion can be seen in the Qur'an Al-Baqarah verse 102 which has meaning:

“And follow that which the devils falsely related against the kingdom of Solomon. Solomon disbelieved not; but the devils disbelieved, teaching mankind magic and that which was revealed to the two angels in Babel, Harut and Marut. Nor did they (the two angels) teach it to anyone till they had said: We are only a temptation, therefore disbelieve not (in the guidance of Allah). And from these two (angels) people learn that by which they cause division between man and wife; but they injure thereby no-one save by Allah's leave. And they learn that which harmeth them and profiteth them not. And surely they do know that he who trafficketh therein will have no (happy) portion in the Hereafter; and surely evil is the price for which they sell their souls, if they but knew”

c. Criminal Policy and the Regulation of the Black Magic in Indonesia

The study of criminal policy critically reviews the developed crime in the society concerning to the current criminal law and recommends a future law development. In the political perspective, crime can be overcome by using one of its steps, namely use penal law. Prof. Sudarto states that criminal policy is the rational effort of society to cope the crime. It is accomplished through penal law and not using penal law, criminal law can be a mean of social control, particularly in solving the crime. Sudarto divided it into two. First, criminal policy can be narrowly defined as any attempts to cope with the crime. Secondly, criminal policy can be largely defined as efforts which are made through making the laws and actions of official bodies which aimed at enforcing the basic norms followed by the society.

Basically, Criminal Code (KUHP) principalized that a crime can be punished only if it can be approved that it is contradictive to the legal law, the black magic is a social act in which it is a magical act that can not be proven scientifically while the criminal law requires evidence, at least there are two valid evidences, as written in Article 184 of the Criminal Procedure Code:

- a. Witness's Statement
- b. Expert's Description
- c. Letter
- d. Hints
- e. Defendant's description

The Articles that govern the black magic in the Criminal Code are very unrepresentative. In Article 545 prohibits to be fortune-teller or dreams interpreter, as matter of fact, there are many fortune teller either they do it silently or frankly. There are many practices of telling a fortune in the market and in other center of crowded places, many shamans try to foresee by using a sparrow or fortune telling code. It is also practiced in the online media that we can get access to it very easily. This article is made to protect people from being victim and being cheated by them who work and get income by doing the shaman or fortune teller practice.

Article 546 prohibits us to sell supernatural objects, but certain objects ranging from kris, ruby python, antique firing stone, snail, single rattan and yellow can be traded. This article also cannot accomplish the problem of the black magic therefore there must be an attempt to criminalize the black magic with criminal policy in the sense of new offense because the impact is a potential factor of large enough criminogen, the society's fidgetiness and persecution.

The black magic is a mystical problem that is not able to be proved medically or forensically, how the law can evidence an act which it has not been formed; hence it is so complicated to be evidenced scientifically, even now the Criminal Code has not been able to reach the problem of black magic. Eventhough, the society can still feel the black magic up to now, well it was bloated in the part of stomach and the victim will pass away if he/she cannot get its amulet.

This situation continues to a society that desires a justice and protection from the country through criminal law as well as many people become victims of this mystical crime. But on the other hand, the

law is encountered by the systematic evidence where the black magic cannot be proven up to now. Consequently, the black magic cannot be classified as panel law because panel law itself is a contrast to the law and it is regulated in the clear legal product of law, while KUHP has never regulated that problem, if only it is available, it will not be representative to approve the case of the black magic.

Criminality is not a new thing of the law, particularly in the panel law. It is intended as the process of determining an act which previously is not regulated in the law. This process ends with the formation of a law in which the act is threatened with a sanction in the form of a criminal. Criminality of black magic is existed in article 293 RKUHP:

- a) *Whoever claimed that he has supernatural power, disclose, giving hope, and offer helps to other can affect the one's physical and mental suffering, he will be brought to the prison maximum time of 5 years or being fined the most category IV.*
- b) *If the criminal offenders as stated in the article 1 do the action for looking for profits or make it as livelihood or habit, then it will be fined more one third.*

Some of cases that may appear in proving the black magic because the principle of criminal proof is to be proved materially not formally. Proving the black magic cannot be handed over to the wizard/paranormal/supernatural. Then, article 184 KUHP shows that one of means of proof is expert's explanation in which the legal doctrine dictates that the expert's opinion is related to the science he has learnt. So it can be concluded that the expertise should be related to science which belong to the expert and it has been learnt. Meanwhile there is no special science about magical, black magic, and mystical secret and so on, so it is complex to decide one's barometer in the black magic.

The black magic is a social reality in which its existence cannot be denied by the society, so it is not an astonishment that there is a place in the form of law product or legal product because from all cases of black magic in this homeland must be ended with the death of the black magic practitioner himself and even become a victim of mutilation so that it becomes crime for crime. Criminalization of the black magic crime is surely needed it is based on several reasons:

1. The black magic is a complex magical to prove empirically. Being proven empirically, the magical elements of the magic practice will be vanished because it becomes a common act which is related to the physics law. Facing it into rational modern laws, this magical might want to be paradoxical and due to this reason KUHP is getting difficulty of interpreting and accommodating all of non-causative thing. If the black magic is intentionally practiced to harm others, the effects will be viewed, namely a fact that a man suffers because of unlogical reasons. This phenomenon is still acknowledged by most people in Indonesia.
2. The people's belief of the black magic is often in the form of persecuted reaction such as having gang up, highly tortured, premediated murder, even mutilation. So it is not about the mechanism of the black magic itself which is going to be studied empirically although the remark of the black magic can be seen physically from the victim, this explanation listed out two points:
 - a. social reactions to the issue of black magic can cause felony; and
 - b. Viewing by the victimology that people who become the victim of the black magic criminality generally consider that the law cannot give protection, further it bears serious criminality so that it seems to be very odd that the positive law cannot offend and take it as the black magic criminality. It is indicated that the positive law of Indonesia is still vacuum in this case.
3. In terms of religious belief, particularly Islam, the black magic is not an awkward thing. It is affirmed in the holy Qur'an that there is such witchcraft that can put one into bad luck or misfortune although it has different name in every region. But the black magic is a kind of a criminalized and misguided act so that Islam strongly prohibits any kind of black magic practices. If we might deserve the religious teaching and guiding, the criminality of the black magic can be also be viewed as the positivism of religious law which is being adopted by most Indonesian populations.

The writer agreed with the article of 293 RKUHP that the black magic is required to criminalize for the purpose of protecting the wider public interest. Criminalizing the black magic does not mean to punish everyone who has black magic without employing it into the real actions, but for everyone who

offers and provides services of supernatural powers, disclosing, giving hope, and offering services to others. it is in line with the criminal policy that it is a conscious effort of setting up the crime by making penal law as a means to achieve the state goal as existed in the Preamble of the 1945 Constitution of the Republic of Indonesia which is to protect the whole Indonesian nation and the entire blood of Indonesia.

CONCLUSION AND SUGGESTION

Based on the description above, it can be concluded that the black magic is a crime because people consider it as forbidden and anti-social acts. It is used to vent the jealousy, revenge, and envy either on their own volition or on others' orders which can cause the death to the victim and it becomes the fidgetiness for the society. Criminal policy in setting up the black magic is that by regulating it into positive law of Indonesia. The black magic is now regulated article 293 RKUHP for everyone who claims that he has supernatural powers, disclose, give hope, and provide services to others. The criminality of the black magic is necessary considering its effect both from victim side and practitioner side is becoming the society's tantrum for being accused as the black magic practitioners. And constitutionally it is to achieve the aim of the country which exists in the preamble of the 1945 constitution of republic of Indonesia, namely protecting the entire nations of Indonesia

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